Supreme Court, U.S.
FILED

No. 03 131 JUL 23 2003

In The

Supreme Court of the United States

ED LITTLE,

Petitioner,

v.

MISSISSIPPI DEPARTMENT OF HUMAN SERVICES,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of Mississippi

PETITION FOR WRIT OF CERTIORARI

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68 pp

QUESTIONS PRESENTED

1. Does it violate the First and Fourteenth Amendments for a state supreme court to convict a pro se appellant of criminal contempt and fine him $1,000 for exhibiting what the court called "utter disrespect for the authority of this Court" by filing a petition for rehearing that accused the justices of telling "lie[s]" and of "ma[king] a mockery out of the statutes" in their opinion on the merits and that asked rhetorically if the justices were "drunk" or "on drugs," as well as by filing a response to an order to show cause why he should not be held in contempt that accused the justice who signed the order of "judicial terrorism," that again said the justices had "lie[d]," that again asked rhetorically if they were drunk or on drugs, that said historically courts in the state had ruled against legitimate legal claims by blacks, that said the court had demonstrated racism by ignoring court rules and statutes and by lying about the facts, and that accused the court of acting in a way that "mess[ed] over a black man and his son?"

2. Do the Sixth and Fourteenth Amendments require the provision of counsel before a person can be convicted of criminal contempt by a court and sentenced to a fine that must be paid within 30 days, absent which the person will face possible incarceration under the terms of the court order?

3. Does the Fourteenth Amendment require that judges recuse themselves from adjudicating charges of criminal contempt that they levy against a person for criticizing them?

4. Can a person be convicted of criminal contempt consistent with the Fourteenth Amendment in the absence of a finding that he is a guilty beyond a reasonable doubt?

5. Is there proof of criminal contempt beyond a reasonable doubt where a pro se appellant's statements in written filings to an appellate court do not threaten to interfere with the administration of justice or otherwise create a situation that justifies a conviction for criminal contempt?

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The petitioner, Ed Little, who was proceeding pro se, was convicted of criminal contempt by the Supreme Court of Mississippi, fined $1,000, and threatened with jail if he did not pay the fine within 30 days because of written comments he made disparaging the Justices of that Court in a petition for rehearing and in a subsequent response to an order to show cause. Mr. Little petitions this Court for a writ of certiorari to review whether he has a right under the First and Fourteenth Amendments to the United States Constitution to criticize the Justices as he did in a written filing, as well as whether he was entitled to the provision of counsel, whether recusal of the Justices was required, whether the conviction can stand in the absence of a finding of proof beyond a reasonable doubt, and whether his comments amount to proof of criminal contempt beyond a reasonable doubt.

OPINIONS BELOW

The April 24, 2003 sanction order of the Supreme Court of Mississippi is unpublished and is reproduced in the appendix, App. 1. The January 30, 2003 show cause order of the Supreme Court of Mississippi is unpublished and is reproduced in App. 3. The January 23, 2003 order of the Supreme Court of Mississippi denying rehearing on the merits is unpublished and is reproduced in App. 4. The December 5, 2002 opinion of the Supreme Court of Mississippi on the merits is published at 835 So.2d 9 (Miss. 2002) and is reproduced in App. 5.

JURISDICTION

This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1257. The order of the Supreme Court of

Mississippi imposing sanctions was issued on April 24, 2003.

CONSTITUTIONAL PROVISIONS

The First Amendment to the United States Constitution reads, in relevant part: "Congress shall make no law . . . abridging the freedom of speech . . . or the right of the people . . . to petition the Government for a redress of grievances."

The Sixth Amendment to the United States Constitution reads in relevant part: "In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence."

The Fourteenth Amendment to the United States Constitution reads, in relevant part: ". . . No state shall . . . deprive any person of life, liberty, or property, without due process of law . . . ."

STATEMENT OF THE CASE

On May 1, 2001, petitioner Ed Little, proceeding pro se, sued the Mississippi Department of Human Services (DHS) in the Circuit Court of Harrison County, Mississippi, alleging that DHS improperly took custody of his son. DHS's motion to dismiss was granted by the Circuit Court. Mr. Little then appealed pro se to the Supreme Court of Mississippi. On November 7, 2002, the Supreme Court affirmed the dismissal. *Little v. Mississippi Department of Human Services*, 835 So. 2d 9 (Miss. 2002), App. 5.

On December 2, 2002, Mr. Little filed a pro se petition for rehearing. He said the petition "is based upon points of law and fact, or the lack of facts, that this Court overlooked and misapprehended." App. 16. Among other arguments, he claimed that certain statements and insinuations in the Court's opinion regarding procedural developments in the case were "lie[s]." App. 17, 19-20. His petition included the following statements:

> 4. If there is any way that I can assist you with complying with the Mississippi Code. [sic] please don't hesitate to ask.
>
> * * *
>
> 16. . . . I have to ask if you know the *difference* between a **Complaint** and an **Appeal**. If you don't, a Complaint starts with the letter "**C**," and an Appeal with the letter "**A**."
>
> * * *
>
> 18. I thought the day will never come that justices of this Court would stoop so low.
>
> 19. The accusation that I took an appeal from a decision in youth court is foolishness and a lie.
>
> * * *
>
> 20. You must produce the "Appeal" to prove that you justices are not liars.
>
> * * *

23. This Court lied when it insinuated that "DHS" had a custody order under "Miss. Code Ann. § 43-21-301." A lie is unreasonable.

24. You must produce the order that predates January 29, 2000, to prove that you justices are not liars.

* * *

28. "DHS" held my son as a "hostage." Otherwise, "DHS" must state it's authority . . . .

App. 16 -20. The petition for rehearing concludes with the following:

30. You lied. Were you drunk? on drugs? Crack Cocaine?

31. I demand a written apology from justices McRae, Easley, and Carlson.

V. CONCLUSIONS

32. Justices McRae, Easley and Carlson made a mockery out of the statutes.

33. The opinion of this Court is a combination of narcissism and annihilism [sic].

34. You don't win by lying - even a broken clock is right twice a day [sic]

VI. RECOMMENDATIONS

35. Stop lying.

36. Reverse.

App. 20-21.[1]

The Mississippi Supreme Court denied the petition for rehearing on January 23, 2003. App. 4. On January 30, 2003, the Court entered the following order against Mr. Little:

> In his Petition [for rehearing], Little casts various aspersions about the integrity of this court. He repeatedly accuses the Court of lying in the opinion. He also suggests that members of the Court were drunk or on drugs and that the Court has "made a mockery of the statutes." The Court finds that Little should be required to show cause, if any he can, why he should not be sanctioned for his disrespectful conduct in this matter.

App. 3. He was given fourteen days to respond. *Id.*

Again acting pro se, Mr. Little filed a document which he labeled a "Response to Threaten Sanction for Justices Lying." App. 22. In it, he accused the three Justices on the panel who heard his case of lying about "the existence of crucial documents [in order] to subvert the laws of this State."App. 23. He called the Court's opinion

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[1] Mr. Little's case was heard by a panel of Justices McRae, Easley, and Carlson, the three justices to whom Mr. Little occasionally referred in his petition. *See*, App. 5. In the Mississippi Supreme Court, some cases are heard by panels and others en banc by the entire Court. Even when only a panel hears the case, all justices participate and vote on the outcome. App. 14. *See also*, Miss. R. App. P. 24.

"wrongheaded and misguided." *Id.* He referred specifically to Justice Easley, who had signed the January 30, 2003 show-cause order:

> 3. Practicing judicial terrorism, Justice Chuck Easley indicated in an Order, filed January 30, 2003, that I casted [sic] "various aspersions about the integrity of this Court." "He repeatedly accused the Court of lying in the opinion," Justice Easley wrote without indicating whether Justice Easley and the two other justices actually lied.

Id. In addition, Mr. Little's response included the following:

> 4. It is my duty, parentally and legally, to call you a liar after you had lied.
>
> * * *
>
> 11. You have the balls to talk to me about the "integrity of this Court."
>
> * * *
>
> 25. On the surface it appear [sic] that your lies were academic. It's more than that. The fundamental uncertainty is whether the justices or this Court, individually or as a panel, can fairly resolve a conflict between a black person and the government or a white person without the frightening introduction of racism in which this Court clearly demonstrated by ignoring it's on [sic] court rules, ignoring statutes, and lying about

> the facts when such court rules, statutes, and facts were in my favor, a black man.
>
> 26. Clearly, to make such a grand blunder, a depreciated mental ability is suspected. It also explains while [sic] it is exceeding [sic] difficult to correct your mistakes.

App. 23-27. Mr. Little again asked the Justices if they were drunk, on drugs, or on crack cocaine. He said that if they were not, "then racism is indicated." App. 27. He concluded with the following:

> 29. Historically, courts in this State have have [sic] ruled against legitimate legal claims by blacks for crimes committed by whites against us. It is serious racketeering. Here, this Court is tring [sic] to sweep under the rugs [sic] falsified documents, ignorant white judges sitting in the wrong court, scores of white witnesses lying off and on the stand, and the wholesale slaughther [sic] of the laws of this State to mess over a black man and his son. Look at yourself, you are sitting there with an empty right hand with your mouth poked out tring [sic] to think up a way to get back at me instead of trying to square up the facts ans [sic] laws in this case.
>
> 30. I have no confidence in Justices Carlson, McRae, or Easley. you'll [sic] lied.
>
> 31. You have no constitutional right to determine if you lied. The Legislature and/or myself have that responsibility.

App. 27-28.

On April 24, 2003,the Mississippi Supreme Court, sitting en banc (with Justices McRae and Diaz not participating), issued an order stating:

> This matter is before the Court, sitting en banc, on the Court's own motion. By order entered on January 30, 2003, Ed Little was ordered to show cause why he should not be sanctioned for offensive and disrespectful language he utilized in his petition for rehearing filed with this Court on December 2, 2002. In that petition, Little attacked the integrity of this Court. He repeatedly accused the Court of lying in the opinion. He also suggested that members of the Court were drunk or on drugs and that the Court had "made a mockery of the statutes." In his response to the show cause order, rather than apologizing for his previous disrespectful conduct, Little again impugns the members of the Court. He alleges that various Justices are guilty of lying, of being racially prejudiced against him, and of "practicing judicial terrorism." He again asserts that members of the Court were drunk or on drugs when the Court handed down its opinion.
>
> After reviewing Little's response to the show cause order, the Court finds that Little should be sanctioned for his conduct in this matter. The Court finds that Little should be sanctioned

> $1000.00 for his utter disrespect for the authority of this Court. Little shall pay $1000.00 to the Clerk of this Court within thirty days of entry of this order. If Little fails to pay the sanction within the time allotted, a show cause order will be entered requiring Little to appear in person before this Court to determine what further sanction, including possible incarceration for contempt, would be appropriate.

App. 1-2.

No further orders have been issued by the Mississippi Supreme Court.

Mr. Little's response to the order to show cause did not specifically claim that a sanction against him would violate the United States Constitution. Well after the April 24, 2003 sanction order was issued, the undersigned counsel agreed to represent Mr. Little for purposes of challenging the sanction. Soon thereafter, on July 16, 2003, counsel filed with the Supreme Court of Mississippi a motion to vacate the sanction order, and subsequently filed a supplement to that motion. App. 29, 33. The motion and the supplement raised the federal constitutional issues that are raised in this petition for certiorari.

The motion to vacate stated that, if the Court deemed it appropriate, the motion should be considered as a request for rehearing. To the extent the request to rehear the matter might be considered untimely by that Court (motions for rehearing normally must be filed within fourteen days, Miss. R. App. P. 40(a)), the motion requested that the Court suspend its rules as permitted by Miss. R. App. P.

2(c), or allow an otherwise untimely filing as permitted by Miss. R. App. P. 26(b), and consider the motion on its merits. As the motion explained, Mr. Little previously was unrepresented by counsel, the sanction order implicates serious constitutional issues, and the constitutional violation is the sort of plain error which the Mississippi Supreme Court would consider on the merits even absent procedural preservation if this were an appeal to it from a trial court. App. 29-30 n.1. The supplement also pointed out that Mr. Little was entitled under the federal constitution to counsel to defend him when charged with contempt in light of the threat to incarcerate him if he did not pay the fine timely, and the Court should therefore resolve the motion to vacate on the merits now that he is represented by volunteer counsel. App. 33-34. In addition, the supplement explained that under Miss. Code Ann. § 9-1-17, the maximum fine the Supreme Court can impose for contempt is $100, and thus the fine here must be reduced from $1,000 to $100. App. 34.

There has been no ruling by the Mississippi Supreme Court on the motion to vacate. Nevertheless, this petition for certiorari is being filed within ninety days of the April 24, 2003 sanction order to insure that the petition is timely.

REASONS FOR GRANTING THE WRIT

This Court has jurisdiction to review this case even though Mr. Little did not, in responding to the order to show cause, spell out the federal constitutional claims raised here. Mr. Little was unrepresented in the Mississippi Supreme Court. In at least one case where an issue was not raised in a lower federal court, this Court has

excused the failure and granted review because the defendant had no counsel there. *See, Pollard v. United States*, 352 U.S. 354, 359 (1957) ("had petitioner been represented by counsel in the courts below and upon his petition for certiorari, we might well have considered those questions neither preserved below nor raised in the petition.") Of course, the current case comes from a state court, thus raising the question that this Court left unresolved in *Illinois v. Gates*, 462 U.S. 213, 222 (1983): whether in state court cases "the 'not pressed or passed upon below' rule is jurisdictional, as our earlier decisions indicate, or prudential, as several of our later decisions assume. . . ." *See also, Yee v. Escondido*, 503 U.S. 519, 533 (1992) ("we have expressed inconsistent views as to whether this rule is jurisdictional or prudential in cases arising from state courts. . . .")

As noted in *Gates*, 462 U.S. at 219, this Court in *Terminiello v. Chicago*, 337 U.S. 1 (1994), and *Vachon v. New Hampshire*, 414 U.S. 478 (1974), reversed criminal convictions on grounds raised neither in state court nor in this Court. In both of those cases, the defendants were represented by counsel in the lower courts. In the present case, of course, the petitioner was unrepresented, which makes an even stronger case for procedural lenience than in *Terminiello* and *Vachon*. Moreover, as explained later in this petition, this Court's decision in *Alabama v. Shelton*, 535 U.S. 654 (2002) indicates that the failure to provide the petitioner here with counsel in the absence of a specific waiver violated the Sixth and Fourteenth Amendments. This further supports the exercise of this Court's jurisdiction to hear this case.

Nothing in the language of 28 U.S.C. § 1257 specifies that this Court's jurisdiction to review final judgments or decrees of state supreme courts is strictly contingent upon the federal issue being properly presented in the state courts, particularly where a party has no attorney. This indicates the rule is prudential rather than jurisdictional.

If the rule is prudential, the Court should consider not only the absence of counsel in the lower court, but the fact that the federal constitutional questions that exist here are not obscure points. The Justices of the Mississippi Supreme Court likely recognized that the federal constitution affects their authority to punish a litigant for something he or she says while petitioning the judicial branch of government, and also calls into play certain procedural protections. Thus, the Justices probably considered the matter and nevertheless concluded that the sanction order does not transgress the relevant federal constitutional limits.

Accordingly, this Court should do as it did in *Pollard* and review the federal questions irrespective of the failure of the pro se litigant to spell them out in his lower court filing.

I. THE COURT SHOULD DETERMINE WHETHER A PRO SE LITIGANT HAS THE RIGHT UNDER THE FIRST AND FOURTEENTH AMENDMENTS TO FILE PLEADINGS CRITICIZING JUDGES IN THE MANNER EMPLOYED HERE, AND ALSO SHOULD CLARIFY THE PROPER STANDARD FOR DETERMINING THE CONSTITUTIONALITY OF STATEMENTS LIKE THESE.

Central to the First Amendment is the right to criticize government officials. "[D]ebate on public issues should be uninhibited, robust, and wide-open . . . and may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." *New York Times v. Sullivan*, 376 U.S. 254, 270 (1964). The right to criticize government officials obviously includes the right to criticize judges, a right possessed not only by members of the general public under the First Amendment, but by litigants and attorneys speaking during the course of litigation. *In re Little*, 404 U.S. 553, 554 (1972); *Holt v. Virginia*, 381 U.S. 131, 137 (1965). The right of pro se litigants and attorneys to speak stems not only from the First Amendment, but the Sixth Amendment in criminal cases and the Due Process Clause of the Fourteenth Amendment in both criminal and civil cases.

At the same time, litigants and lawyers may not "thwart[] and obstruct[]" the "orderly progress" of courts. *Illinois v. Allen*, 397 U.S. 337, 346 (1970). "Although litigants do not 'surrender their First Amendment rights at

the courthouse door,' those rights may be subordinated to other interests that arise in this setting." *Seattle Times v. Rhinehart*, 467 U.S. 20, 32-33 n. 18 (1984) (citation omitted). The present case raises questions about the extent of a pro se litigant's right to criticize judges in written pleadings and the constitutional standard to be applied in that situation.

Already pending before this Court is a petition for certiorari seeking review of an Indiana Supreme Court order sanctioning a lawyer for signing an appellate brief that included a footnote stating that an Indiana Court of Appeals opinion "is so factually and legally inaccurate that one is left to wonder whether the Court of Appeals was determined to find for Appellee . . . and then said whatever was necessary to reach that conclusion . . . ." *In re Wilkins*, 777 N.E. 2d 714, 715-16 (Ind. 2002), *petition for cert. filed, Wilkins v. Disciplinary Commission of the Supreme Court of Indiana*, No. 02-1616 (May 5, 2003).

The comments that led to the sanction in the present case are more extreme than in *Wilkins*, but unlike *Wilkins*, the Mississippi Supreme Court here was not acting pursuant to its interest in regulating the conduct of the legal profession. The present case is similar to *In re Little*, where this Court reviewed a contempt order issued against a pro se defendant who accused a trial judge in open court of bias and of prejudging the case. In reversing, this Court said:

> There is no indication . . . that petitioner's statements were uttered in a boisterous tone or in any wise actually disrupted the court proceeding.

> Therefore, 'The vehemence of the language used is not alone the measure of the power to punish for contempt. The fires which it kindles must constitute an imminent, not merely a likely, threat to the administration of justice. The danger must not be remote or even probable; it must immediately imperil . . . (T)he law of contempt is not made for the protection of judges who may be sensitive to the winds of public opinion. Judges are supposed to be men of fortitude, able to thrive in a hardy climate.' *Craig v. Harney*, 331 U.S. 367, 376 (1947). 'Trial courts . . . must be on guard against confusing offenses to their sensibilities with obstruction to the administration of justice.' *Brown v. United States*, 356 U.S. 148, 153 (1958).

404 U.S. at 555.

The case quoted in the foregoing passage in *Little* — *Craig v. Harney* — involved a reversal by this Court on First Amendment grounds of a contempt order entered against journalists who had called a judge high handed and labeled his decision a tragedy in a local newspaper. The Court said that free speech should not be hampered by sanctions unless the speech involves a "serious and imminent threat" and a "clear and present danger to the administration of justice." *Craig v. Harney*, 331 U.S. at 372-373. "The fact that the discussion . . . was not in good taste falls far short of meeting the clear and present danger test." *Id.* at 377.

The quotation of the *Craig v. Harney* "imminent . . . threat to the administration of justice" test in the case of *In re Little* suggests that this protective standard, which governs out-of-court statements by the news media, is also the test that should apply to the statements of pro se litigants in pleadings and in courtrooms. At the same time, this standard is not necessarily applicable to the statements of attorneys when those statements impact pending cases. *See, Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1071, 1074-1075 (1991) ("in the courtroom itself, during a judicial proceeding, whatever right to 'free speech' an attorney has is extremely circumscribed," while out-of-court "speech of lawyers representing clients in pending cases may be regulated under a less demanding standard than that established for regulation of the press.")

While the *Wilkins* certiorari petition raises the constitutionality of sanctioning an attorney for criticizing judges in a written brief, the present case raises a similar question with respect to a pro se litigant. This Court should grant certiorari to clarify the proper standard not only for lawyers, as in *Wilkins*, but for pro se litigants, as here.

Further, certiorari should be granted to correct the error of the Supreme Court of Mississippi in issuing the sanction order, which is unconstitutional under any standard. Clearly, the present case is not a situation where there is any threat to the administration of justice, much less a serious or imminent one. The statements by Mr. Little came in a written petition and were in no way disruptive of a court proceeding. He is not an attorney and there was no need to sanction him as part of the Mississippi Supreme Court's regulation of the conduct of the legal profession.

While that Court held that Mr. Little used "offensive and disrespectful language," "attacked the integrity of this Court," and displayed "utter disrespect for the authority of this Court," App. 1-2, this is insufficient under the First and Fourteenth Amendments to punish him for his pro se statements in a written brief.[2]

II. THE COURT SHOULD DECIDE WHETHER THE THREAT OF INCARCERATION IF A PERSON FAILS TO PAY A FINE IMPOSED FOR CRIMINAL CONTEMPT REQUIRES THAT COUNSEL BE PROVIDED UNDER THE SIXTH AND FOURTEENTH AMENDMENTS.

Clearly, this case involves a finding of criminal rather than civil contempt. *See, Hicks v. Feiock*, 485 U.S. 624, 631-633 (1988). Defendants in criminal contempt cases

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[2] It is ironic that the Justices have convicted Mr. Little of contempt for his criticism at a time when some of them are publicly criticizing each other. Jerry Mitchell, *Discord Presides at High Court*, The Clarion Ledger, June 8, 2003, at A1, *available at* www.clarionledger.com (in interviews with the press, one Justice called another "a hateful little man" who "tries to bully everybody" and has such an ego that "I'm surprised he can get his head through an average door," while the other claimed the first is inexperienced, intransigent, and allied with a third Justice in trying to divide the Court). *See also, Dillard v. Musgrove*, 838 So.2d 261, 266 (Miss. 2003) (Pittman, C.J., joined by three other Justices, concurring) (stating that another Justice appears to have violated the Code of Judicial Conduct and that "[t]his action will be reported to the Mississippi Commission on Judicial Performance for appropriate disciplinary action.")

are entitled to many of the same constitutional protections available in other criminal cases. *Id.* at 632.

In *Argersinger v. Hamlin*, 407 U.S. 25, 37 (1972), this Court said that "absent a knowing and intelligent waiver, no person may be imprisoned for any offense . . . unless he was represented by counsel at his trial." In *Alabama v. Shelton*, this Court held that the Sixth Amendment required reversal of a conviction where the defendant represented himself, was never offered the assistance of counsel, and was sentenced to a fine and a suspended 30 day jail term. 535 U.S. at 658. "We hold that a suspended sentence that may 'end up in the actual deprivation of a person's liberty' may not imposed unless the defendant was accorded 'the guiding hand of counsel' in the prosecution for the crime charged." *Id.*, *quoting, Argersinger*, 407 U.S. at 40. *See also, Cooke v. United States*, 267 U.S. 517, 537 (1925) (constitutional protections for those accused of contempt "include[] the assistance of counsel, if requested.")

In the present case, the Mississippi Supreme Court imposed a fine of $1,000, but said that if the fine is not paid within 30 days, Mr. Little will face "possible incarceration for contempt." App. 2. *Shelton* indicates that he was entitled to counsel to defend him when accused of contempt, and since he was neither offered counsel nor waived his right, the conviction should be vacated. Certiorari should be granted to determine the scope of the right to counsel here. This question is of particular importance if this Court foregoes consideration of the other federal constitutional issues because Mr. Little did not specifically mention them in his uncounseled response to the show cause order in the Mississippi Supreme Court.

III. THE COURT SHOULD DECIDE WHETHER THE FEDERAL CONSTITUTION REQUIRES JUDGES TO RECUSE THEMSELVES WHEN THEY LEVY CHARGES OF CRIMINAL CONTEMPT AGAINST SOMEONE FOR CRITICIZING THEM.

In *Withrow v. Larkin*, 421 U.S. 35 (1975), the Court said:

> [V]arious situations have been identified in which experience teaches that the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable. Among these cases are those in which the adjudicator has . . . been the target of personal abuse or criticism from the party before him.

Id. at 47. In an ensuing footnote, *id.* at 47 n. 3, the Court in *Withrow* cited *Ungar v. Sarafite*, 376 U.S. 575 (1964), *Mayberry v. Pennsylvania*, 400 U.S. 455 (1971), and *Taylor v. Hayes*, 418 U.S. 488 (1974). In *Ungar*, the Court held that a lawyer's "disruptive, recalcitrant and disagreeable commentary" was not "an insulting attack upon the integrity of the judge carrying such potential for bias as to require disqualification." 376 U.S. at 584. In *Mayberry*, on the other hand, where a pro se defendant called the trial judge a "dirty sonofabitch," a "dirty tyrannical old dog," and a "fool," the Court held that recusal was required: "[B]y reason of the Due Process Clause of the Fourteenth Amendment a defendant in criminal contempt proceedings should be given a public

trial before a judge other than the one reviled by the contemnor." 400 U.S. at 466. In *Taylor*, the Court also required recusal where "we have concluded that 'marked personal feelings were present on both sides' and that the marks of 'unseemly conduct [had] left personal stings.'" 418 U.S. at 503, *quoting, Mayberry*, 400 U.S. at 464.

Certiorari should be granted to determine whether the principles of those cases require the recusal of judges — like those in the present case — who have charged a person with contempt for criticizing them.[3]

IV. THE COURT SHOULD REVIEW THIS CASE BECAUSE THERE WAS NO FINDING OF GUILT BEYOND A REASONABLE DOUBT.

This Court long has held that the Due Process Clause of the Fourteenth Amendment requires that criminal contempt cases be proved and found beyond a reasonable doubt. *See, Hicks v. Feiock*, 485 U.S. at 632, and cases cited therein. Miss. Code Ann. § 11-51-11(4) requires the same thing. Yet here, the Mississippi Supreme Court did not make any finding that criminal contempt had been proven beyond a reasonable doubt. *See*, App. 1-2. Thus, the conviction must be vacated. *See, Sullivan v. Louisiana*,

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[3] There are a number of alternatives if recusal is required here. The matter could be remanded to the trial judge for determination with appeal to the intermediate Mississippi Court of Appeals, or it could be sent to the Court of Appeals for determination in the first instance. In addition, Art. 6, § 165 of the Mississippi Constitution provides that the parties may agree upon, or the Governor may commission, a person "of law knowledge" to replace any judge of the Supreme Court who is disqualified from sitting.

508 U.S. 275, 280-282 (1993) (conviction must be reversed unless the proper fact-finder concludes that the case was proved beyond a reasonable doubt). Certiorari accordingly should be granted.

V. THE COURT SHOULD REVIEW THIS CASE BECAUSE CONTEMPT HAS NOT BEEN PROVEN BEYOND A REASONABLE DOUBT.

Not only was contempt not specifically found beyond a reasonable doubt, but it was not proven beyond a reasonable doubt. Mississippi does not have a statute specifying the substantive elements of criminal contempt. *Compare*, 18 U.S.C. § 401 (authorizing federal courts to punish for contempt any "[m]isbehavior of any person in its presence or so near thereto as to obstruct the administration of justice," or any "[d]isobedience or resistance to its lawful writ, process, order, rule, decree, or command.") As indicated in Section I of this petition, courts have the authority to punish behavior that obstructs the administration of justice or constitutes an imminent threat thereto. But as also set forth in that section, the actions of the petitioner, Mr. Little, did not obstruct the administration of justice or threaten to do so, and he did not do anything else that justifies the use of the contempt power. *See, In re Snyder*, 472 U.S. 634, 646-647 (1985) (the conduct of an attorney who wrote "harsh" and possibly "illmannered" letter saying he was "disgusted" with the practices of a court "does not support a finding of contemptuous or contumacious conduct.") Thus, the case against Mr. Little has not been proven beyond a reasonable doubt and the conviction violates the Due Process Clause of the Fourteenth Amendment. *See,*

Jackson v. Virginia, 443 U.S. 307 (1979). This Court should grant certiorari.

CONCLUSION

For the foregoing reasons, and on the basis of the authorities cited, this Court should issue a writ of certiorari to review the decision of the Supreme Court of Mississippi.

Respectfully Submitted,

ROBERT B. MCDUFF
767 North Congress Street
Jackson, Mississippi 39202
(601) 969-0802

Counsel of Record for Petitioner

APPENDIX

April 24, 2003 sanction order of the Mississippi Supreme Court. . . . . App. 1

January 30, 2003 order to show cause of the Mississippi Supreme Court . . . . . App. 3

January 23, 2003 order of the Mississippi Supreme Court denying rehearing . . . . . App. 4

November 7, 2002 opinion of the Mississippi Supreme Court . . . . . App. 5

Petitioner Little's pro se petition for rehearing to the Mississippi Supreme Court . . . . . App. 15

Petitioner Little's pro se response to the Mississippi Supreme Court's order to show cause . . . . . App. 22

Motion in the Mississippi Supreme Court to vacate sanctions order . . . . . App. 29

Supplement to motion in the Mississippi Supreme Court to vacate sanctions order . . . . . App. 33

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2001-CP-01970-SCT

ED LITTLE ***Appellant***

v.

MISSISSIPPI DEPARTMENT OF HUMAN SERVICES ***Appellee***

ORDER

(filed April 24, 2003)

This matter is before the Court, sitting en banc, on the Court's own motion. By order entered on January 30, 2003, Ed Little was ordered to show cause why he should not be sanctioned for offensive and disrespectful language he utilized in his petition for rehearing filed with this Court on December 2, 2002. In that petition, Little attacked the integrity of this Court. He repeatedly accused the Court of lying in the opinion. He also suggested that members of the Court were drunk or on drugs and that the Court had "made a mockery of the statutes." In his response to the show cause order, rather than apologizing for his previous disrespectful conduct, Little again impugns the members of the Court. He alleges that various Justices are guilty of lying, of being racially prejudiced against him, and of "practicing judicial terrorism." He again asserts that members of the Court were drunk or on drugs when the Court handed down its opinion.

After reviewing Little's response to the show cause order, the Court finds that Little should be sanctioned for his conduct in this matter. The Court finds that Little should be sanctioned

$1000.00 for his utter disrespect for the authority of this Court. Little shall pay $1000.00 to the Clerk of this Court within thirty days of entry of this order. If Little fails to pay the sanction within the time allotted, a show cause order will be entered requiring Little to appear in person before this Court to determine what further sanction, including possible incarceration for contempt, would be appropriate.

IT IS THEREFORE ORDERED that Ed Little has not shown cause why sanctions are not appropriate in this matter. Little is hereby sanctioned $1000 to be paid to the Clerk of this Court within thirty days of the entry of this order. The Clerk of this Court shall mail a filed copy of this executed order to Ed Little.

SO ORDERED, this the 10th day of April, 2003.

/s/ Chuck Easley
CHUCK EASLEY, JUSTICE
FOR THE COURT

MCRAE, P.J., AND DIAZ, J., NOT PARTICIPATING.

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2001-CP-01970-SCT

ED LITTLE ***Appellant***

v.

MISSISSIPPI DEPARTMENT OF HUMAN SERVICES ***Appellee***

ORDER

(filed January 30, 2003)

This matter is before the Court on the Court's own motion. Ed Little's appeal was affirmed by opinion of this Court dated November 7, 2002. Thereafter, Little filed a Petition for Rehearing. In his Petition, Little casts various aspersions about the integrity of this court. He repeatedly accuses the Court of lying in the opinion. He also suggests that members of the Court were drunk or on drugs and that the Court has "made a mockery of the statutes." The Court finds that Little should be required to show cause, if any he can, why he should not be sanctioned for his disrespectful conduct in this matter.

IT IS THEREFORE ORDERED that within fourteen days of entry of this order, Ed Little shall show cause why he should not be sanctioned in this matter.

SO ORDERED, this the 23 day of January, 2003.

/s/ Chuck Easley
CHUCK EASLEY, JUSTICE

Supreme Court of Mississippi
Court of Appeals of the State of Mississippi
Office of the Clerk

Betty W. Sephton
Post Office Box 249
Jackson, Mississippi 39205-0249
Telephone: (601) 359-3694
Facsimile: (601) 359-2407

(Street Address)
450 High Street
Jackson, Mississippi
39201-1082
email:sctclerk@mssc.
state.ms.us

January 23, 2003

This is to advise you that the Mississippi Supreme Court rendered the following decision on the 23rd day of January, 2003.

Supreme Court Case # 2001-CP-01970-SCT
Trial Court Case # 2001-85

Ed Little v. Mississippi Department of Human Services

Motion for Rehearing filed by Appellant, Pro Se, is denied.

* NOTICE TO CHANCERY/CIRCUIT/COUNTY COURT CLERKS *

If an original of any exhibit other than photos was sent to the Supreme Court Clerk and should now be returned to you, please advise this office in writing immediately.

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2001-CP-01970-SCT

ED LITTLE

v.

MISSISSIPPI DEPARTMENT OF HUMAN SERVICES

DATE OF JUDGMENT:	11/15/2001
TRIAL JUDGE:	HON. ROBERT H. WALKER
COURT FROM WHICH APPEALED:	HARRISON COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	PRO SE
ATTORNEY FOR APPELLEE:	WILLIAM E. WHITFIELD, III
NATURE OF THE CASE:	CIVIL - TORTS-OTHER THAN PERSONAL INJURY & PROPERTY DAMAGE
DISPOSITION:	AFFIRMED - 11/07/2002
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

(Filed November 7, 2002)

BEFORE McRAE, P.J., EASLEY AND CARLSON, JJ.

CARLSON, JUSTICE, FOR THE COURT:

¶1. This is an appeal from a judgment of the Circuit Court of

the Second Judicial District of Harrison County dismissing a complaint filed, pro se, by the plaintiff, Ed Little (Little), against the Mississippi Department of Human Services (DHS) alleging DHS improperly took custody of Little's son. The matter out of which the complaint arose was brought by DHS in the Youth Court of Harrison County, from which Little did not appeal. Little instituted his circuit court suit for damages; however, the circuit court granted DHS's motion for dismissal. Finding no reversible error, we affirm.

FACTS AND PROCEEDINGS IN TRIAL COURT

¶2. Little filed a complaint against the DHS on May 1, 2001, alleging that DHS held his son as a "hostage." He also alleged that DHS acted under the guise of having a "blanket custody order to keep my son." He demanded judgment in the amount of $250,000. Little alleged also that DHS made false claims of Little's son having various wounds on his body. The complaint made several accusations, namely: (1) that Harrison County Youth Court Judge Michael Ward had conspired with DHS to proceed in the "defunct" Harrison County Family Court; (2) that DHS convinced his son that he "couldn't go back home;" (3) that DHS conspired with Judge Ward to "keep this one," meaning his son; (4) that Judge Ward unlawfully took and tried to "run a magnet over" audio tapes made by Little during contact with DHS "when the assasins [sic] were trying to kill" Little; and (5) that DHS and Judge Ward were operating a "clandestine foster child ring" and DHS was trying to "kidnap my other kids."

¶3. DHS filed its answer on September 21, 2001, responding that Little had failed to properly perfect service of process; that Little had not complied with statutory formalities of administrative procedures and had not exhausted his administrative remedies; and, that Little had not perfected his

right to sue under the Mississippi Tort Claims Act (Miss. Code Ann. §§ 11-46-1 to -23 (2002)). The answer also avers that because the actions about which Little complained were the result of the actions of a judge, DHS is entitled to full judicial immunity. DHS also denied all allegations in the complaint.

¶4. On September 21, 2001, DHS filed a Rule 12(b)(6)[1] motion to dismiss which was granted by the circuit court on November 21, 2001. In the order of dismissal, the trial judge found: (1) that Little failed to allege subject matter or in personam jurisdiction, failed to allege proper venue and failed to properly allege the nature of a cognizable party defendant; (2) that none of the allegations stated claims upon which relief could be granted; (3) that DHS was immune from suit since it exercised discretionary duties; and (4) that the circuit court was without jurisdiction to hear Little's claims.

STANDARD OF REVIEW

¶5. A motion for dismissal under Miss. R. Civ. P. 12(b)(6) raises an issue of law. ***Tucker v. Hinds County***, 558 So.2d 869, 872 (Miss. 1990) (citing ***Lester Eng'g Co. v. Richland Water & Sewer Dist.***, 504 So.2d 1185, 1187 (Miss. 1987); 5 C. Wright & A. Miller, Federal Practice and Procedure § 1357 at 593 (1969)). This Court conducts de novo review on questions of law. ***UHS-Qualicare, Inc. v. Gulf Coast Cmty. Hosp., Inc.***, 525 So.2d 746, 754 (Miss. 1987).

¶6. A motion to dismiss under Miss. R. Civ. P. 12(b)(6) tests the legal sufficiency of the complaint. As stated in ***Franklin County Co-Op v. MFC Services (A.A.L.)***, 441 So.2d 1376, 1377 (Miss. 1983), and ***Stanton & Associates, Inc. v. Bryant***

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[1] Miss. R. Civ. P. 12(b)(6).

Construction Co., 464 So.2d 499 (Miss. 1985), in order to grant a Rule 12(b)(6) motion to dismiss, there must appear to a certainty that the plaintiff is entitled to no relief under any set of facts that could be proved in support of the claim.

DISCUSSION

¶7. In his rambling, often incomprehensible, melodramatic brief, Little raises seven issues:

> (1) Whether the trial court erred in granting the Mississippi Department of Human Services "Rule 12, Miss. R. Civ. P." motion to dismiss; (2) Whether the trial court erred in granting the Mississippi Department of Human Services "Rule 12, Miss. R. Civ. P." motion to dismiss out of venue; (3) Whether the Mississippi Department of Human Services has the authority to make or otherwise issue a "blanket custody order"; (4) Whether the family court of Harrison County was a competent court between the dates of January 29, 2000, and March 21, 2000; (5) Whether the trial court lacks jurisdiction over the Mississippi Department of Human Services, the subject matter of, or the venue in the case; (6) Whether §11-46-11(3) of the Mississippi Code is unconstitutional on the grounds that it establishes separate and unequal class of defendants as well as a separate and unequal class of plaintiffs with disabilities which prohibit them from seeking redress in courts of the State of Mississippi, and therefore a violation Section 24 or 25 of the Constitution of the State of Mississippi; (7) What statutes say that Mississippi Department of Human Services and/or family court Judge Michael H. Ward may kill or

attempt to kill me or may hold my son as hostage or may commit any other allegations in the Complaint.

¶8. DHS condenses these in three main issues:

(1) Little's claim was improperly before the Circuit Court, (2) Little's complaint was properly dismissed pursuant to Miss. R. Civ. P. 12 for failure to comply with the notice requirements of the Mississippi Tort Claims Act, (3) The circuit court properly dismissed Little's complaint pursuant to Miss. R. Civ. P. 12 because Little's allegations fail to state claims upon which relief can be granted.

We will address the pertinent issues as follows:

I. WHETHER LITTLE'S CLAIM WAS PROPERLY BEFORE THE CIRCUIT COURT.

¶9. Miss. Code Ann. § 43-21-651 (2000) provides in pertinent part:

(1) The court to which appeals may be taken from final orders or decrees of the youth court shall be the supreme court of Mississippi. In any case wherein an appeal is desired, written notice of intention to appeal shall be filed with the youth court clerk within ten (10) days after the rendition of the final order or decree to be appealed from....

¶10. According to Little's brief, the decision of the youth court was handed down on January 31, 2000. There is no evidence in the record of any appeal taken from this judgment, much less any appeal taken within the requisite 10 days. Little filed a

complaint against DHS on May 1, 2001, almost a year and a half later. As his proper method of seeking relief from the youth court's determination would have been to file an appeal with this Court within ten days, the filing of an original circuit court complaint against DHS some year and a half later is not the appropriate remedy for seeking relief. Accordingly, the circuit properly held that it had no jurisdiction to hear Little's claims.

II. WHETHER LITTLE'S COMPLAINT WAS PROPERLY DISMISSED UNDER MISS. R. CIV. P. 12 FOR FAILURE TO COMPLY WITH THE NOTICE REQUIREMENTS OF THE MISSISSIPPI TORT CLAIMS ACT.

¶11. Miss. Code Ann. § 11-46-11(1)(2002) provides that "[i]f the governmental entity to be sued is a state entity as defined in Section 11-46-1(j), service of notice of claim shall be had only upon that entity's chief executive officer." As DHS is a state "department" under Miss. Code Ann. § 11-46-1(j), proper service would be had on the chief executive officer of DHS. Little served the Attorney General's office. Nothing in the record shows there was even an attempt to serve DHS's chief executive officer, or anyone at DHS.

¶12. Miss. Code Ann. § 11-46-11(3) provides that any action brought under the Tort Claims Act must be commenced within one year of the date of the tortious conduct. Little's complaint says the date of the conduct was somewhere between January 2000 and March 2000. The complaint was not filed until May 1, 2001. Even with the ambiguity of the date of the conduct alleged in the complaint, the suit was not filed within the statutory time period, and the applicable statute of limitations was not tolled by Little's filing of a notice of claim as

hereinafter discussed.

¶13. Miss. Code Ann. § 11-46-11(1) provides that after administrative avenues have been exhausted (which they never were in this case), a plaintiff must give notice that he will pursue the claim against the agency to the chief executive officer of the agency 90 days prior to the action being filed.

¶14. Little has not done anything which is required under the Mississippi Tort Claims Act to sue a governmental entity. Under the MTCA, we require substantial compliance with regard to filing a notice of claim and the institution of a suit. We held in ***Reaves ex rel. Rouse v. Randall***, 729 So.2d 1237, 1240 (Miss. 1998), that the MTCA left undefined the phrase "chief executive officer of the governmental entity," but we provided a definition for it:

> this term may be read to include any of the following: president of the board, chairman of the board, any board member, or such other person employed in an executive capacity by a board or commission who can be reasonably expected to notify the governmental entity of its potential liability...

We also held in ***Reaves*** that the purpose of this provision was, obviously, to give notice of a claim to a CEO of an agency. Jurisdiction, however, will only attach when there has been "substantial compliance" with the statutes. ***Id.*** In ***Reaves***, we found substantial compliance when the plaintiff served a superintendent of a school district with a claim against the school district.

¶15. The plaintiff must substantially comply with the provisions of the statute. Without doubt, Little has made no effort to comply with the applicable statutes. We note that this

Court gives some latitude to a pro se plaintiff; however, we can hardly afford relief under the applicable statutes when there is no effort to comply with the procedural mandates.

III. WHETHER THE CIRCUIT COURT PROPERLY DISMISSED THE COMPLAINT UNDER MISS. R. CIV. P. 12 BECAUSE NONE OF LITTLE'S ALLEGATIONS STATED CLAIMS UPON WHICH RELIEF COULD BE GRANTED.

¶16. Little makes many allegations in the suit. Among them: (1) his son was held "hostage" from January 30, 2000, until March 21, 2000; (2) DHS acted under a "blanket custody order" to keep Little's son; (3) DHS made a false statement under oath that Little's son had fresh wounds on his body; (4) DHS contracted and conspired with Harrison County Youth Court Judge Michael Ward to intimidate or have Little killed; (5) Harrison County Family Court is defunct and DHS conspired with Little to use the defunct court; (6) DHS told Little's son that "he couldn't go home;" (7) DHS conspired with Judge Ward to delete audio tapes of Little's attempted assassination; (8) DHS made false statements about and modified reports of doctors' testimony in the custody hearing; and (9) DHS and Judge Ward conspired to keep Little's son for a "clandestine foster child ring" and attempted to "kidnap" Little's other children.

¶17. As for the first and second allegations of Little's son being a "hostage" held under a "blanket custody order," not only is DHS immune from suit under the Mississippi Tort Claims Act, but DHS is statutorily authorized to take a child into custody by Miss. Code Ann. § 43-21-301 (2000) when there is an order by a judge, the period of custody does not exceed 48 hours, excluding Saturdays, Sundays and state holidays, and provided

that there is probable cause to believe that:

(a) The child is within the jurisdiction of the court; and

(b) Custody is necessary; custody shall be deemed necessary:
(i) When a child is endangered or any person would be endangered by the child; or
(ii) To insure the child's attendance in court at such time as required; or
(iii) When a parent, guardian or custodian is not available to provide for the care and supervision of the child; and

(c) There is no reasonable alternative to custody.[2]

Miss. Code Ann. § 43-21-303 (2000) allows a law enforcement officer or DHS agent, in the exercise of discretion, to take custody of a child, and the statute further provides the criteria under which the officer or agent may take custody.

¶18. Little indicates in his brief that a child may not be held more than 24 hours, but the statutes specifically state that a judge may authorize temporary custody. Miss. Code Ann. § 43-21-303(4).

¶19. The scope of review of a Rule 12(b)(6) motion is that the allegations in the complaint must be taken as true, and the motion should not be granted unless it appears beyond doubt that the plaintiff will be unable to prove any set of facts in support of his claim. ***Overstreet v. Merlos***, 570 So.2d 1196, 1197 (Miss. 1990); ***Grantham v. Miss. Dep't of Corrections***, 522 So.2d 219, 220 (Miss. 1988); ***Lester Eng'g Co. v. Richland***

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[2] Miss. Code Ann. § 43-21-301(2)(3).

Water & Sewer Dist., 504 So.2d 1185, 1187 (Miss. 1987); ***Stanton & Assocs., Inc. v. Bryant Constr. Co.***, 464 So.2d 499, 505 (Miss. 1985). Concerning Little's first two allegations, it clearly appears beyond doubt that Little would be unable to prove any set of facts in support of these allegations. As for Little's remaining allegations, there is no evidence in the record supporting any of these allegations, thus, once again, inasmuch as it appears beyond doubt that Little would be unable to prove any set of facts in support of any of these allegations, Rule 12(b)(6) dismissal by the circuit judge was not only appropriate, but mandated by law.

CONCLUSION

¶20. Inasmuch as Little's claims were improperly before the circuit court, that court appropriately ruled that it had no jurisdiction to hear Little's claims. Additionally, the circuit court was eminently correct in ruling that Rule 12(b) dismissal was appropriate due to Little's failure to comply with the notice provisions of the Mississippi Tort Claims Act (Miss. Code Ann. §§ 11-46-1 to -23 (2002)) and Little's failure to state any claim or claims upon which relief could be granted. The judgment of the Circuit Court of the Second Judicial District of Harrison County is therefore affirmed.

¶21. **AFFIRMED.**

PITTMAN, C.J., McRAE AND SMITH, P.JJ., WALLER, COBB, DIAZ, EASLEY AND GRAVES, JJ., CONCUR.

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2001-CP-01970-SCT

Ed Little — APPELLANT - Plaintiff

VS.

Mississippi Department of Human Services
APPELLEE - Defendant

Petition for Rehearing

(Filed December 2, 2002)

Date of Judgement: 11/15/02

Court of Record: Second Judicial District of Circuit Court of Harrison County

Trial Court: First Judicial District of Circuit Court of Harrison County

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I. INTRODUCTION

¶1. I, Ed Little, petition this court for a rehearing. This Petition is based upon points of law and fact, or the lack of the facts, that this Court overlooked and misapprehended.

¶2. I will not "ramble." I will not be "melodramatic." I will not be "incoherent," And [sic], I will get staight [sic] to the point.

¶3. In your decision, you didn't compared [sic] the actions of the collaborators, "DHS" and Ward, with the Mississippi Code. Instead, you just cited the Mississippi Code and made your decision, without regard to the actions of the collaborators.

¶4. If there is any way that I can assist you with complying with the Mississippi Code. [sic] please don't hesitate to ask.

II. POINTS OF LAW

¶5. This Court failed to address the overriding issue of jurisdiction as set out in Miss. Code § 11-1-53. The question before the Court was:

> **Whether the trial court erred in granting the Mississippi Department of Human Services "Rule 12, Miss. R. Civ. P." motion to dismiss out of venue?**

¶6. Miss. Code § 43-21-303 is the proper standard to apply in this case.

¶7. This Court's opinion violated the due course of law clause in Section 24 of Article 3 of the Constitution of 1890,

when opinion is intentionally based on lies.

III. POINTS OF FACT

¶8. The insinuation, in ¶9 and ¶10, that the lawsuit in the Second Judicial District of the Circuit Court of Harrison County was an "appeal" from a "decision in youth court" is a lie.

¶9. The statement, in ¶11 of your decision, that "Little served the Attorney General's office," with the notice of claim is a lie.

¶10. The insinuation, in ¶17, that MDHS obtained a custody order with respect to "Miss. Code Ann. § 43-21-301 (2000)," is a lie.

IV. ARGUMENT

¶11. This Court did not look at any of the issues raised in the appeal, alleging that "DHS condenses these in three main issues," in ¶8 of your opinion. The overriding issue of jurisdiction was completely excluded, as well as other "reversible" errors.

¶12. Now, you intentionally overlooked Miss Code § 11-1-53. Technically, Miss Code § 11-1-53 prohibited the circuit court in the First Judicial District of Harrison County from ruling in cases origination [sic] in the circuit court of the Second Judicial District, without a change of venue. Did you see an order changing the venue? For the sake of justice, you must answer that question.

¶13. There is not a dime worth of difference between Ward sitting in a defunct family court and stuffing papers in

youth court, and the judge sitting in the First Judicial District and stuffing papers in the Second Judicial District with a misleading caption. Jurisdiction was absent in both cases.

¶14. What's wrong with you folks? The hearing don't [sic] show on the docket of Circuit Court in the Second Judicial District. I pointed it out to you. You found the error. You knew the error was uncurable and "reversible."

¶15. At this time, I will put in the record the notice of hearing, Exhibit A, so the peoples of this state can see what you done [sic]. (Courthouse for Second Judicial District is in Biloxi, Mississippi.) Likewise, here is the calling card, Exhibit B, that was divvied out by Ward hobbling in family court on February 2, 200 [sic].

[Reproduction of Harrison County Family Court trial date notice omitted in printing.]

Exhibit B: A card show [sic] "trial" scheduled in the abolished family court, [sic]

¶16. I explicitly include the Complaint and the Responce [sic] in the Designation of the Record. The action was initiated in the Second Judicial District of Harrison County Circiut [sic] Court by that Complaint. Did you not see the Complaint in the records transmitted by the clerk? Did you see an "Appeal" in the record transmitted by the cleark [sic]? I have to ask if you know the *difference* between a **Complaint** and an **Appeal**. If you don't, a Complaint starts with the letter "C," and an Appeal starts with the letter "A."

¶17. I strongly suspect that you know better. In §10 you stated: "Little filed a **complaint** against DHS on May 1, 2000, almost a year and a half late." [emphasis added] Actually, the Complaint was filed within the statutory time limit of only year and 90 days [sic].

¶18. I thought the day will never come that justices of this Court would stoop so low.

¶19. The accusation that I took an appeal from a decision in youth court is foolishness and a lie.

¶20. You must produce the "Appeal" to prove that you justices are not liars.

¶21. Unless there is a change of venue, all out-of-venue hearing and derived orders in the First Judicial District of Harrison County will be ignored.

¶22. Continuing, did you realize that an order under "Miss. Code Ann. § 43-21-301," had to exist prior to January 29, 2000, the date this ordeal started? Clearly, the insinuation by this court that "DHS" had such an order is ludcrious [sic]. It is not on record. It exists only in your head. "Miss. Code Ann. § 43-21-301" is not applicable.

¶23. This Court lied when it insinuated that "DHS" had a custody order under "Miss. Code Ann. § 43-21-301." A lie is unreasonable.

¶24. You must produce the order that pre-dates January 29, 2000, to prove that you justices are not liars.

¶25. Miss. Code Ann. § 43-21-303 is the overriding statute to take a child into custody without a custody order and Subparagraph 4 is the overriding paragraph in this case. "DHS" and Ward, out of ignorance, relied on a proprietary "blanket custody order," to carry the day, screwed up Miss. Code Ann. § 43-21-303. There was not an order persuant [sic] to Miss. Code Ann. § 43-21-303.

¶26. Ward hit the ground at Miss. Code Ann. § 43-21-309. The first order is in Exhibit C. Exhibit C is a combination of a "Shelter Hearing" Miss. Code Ann. § 43-21-309 and a "show

cause hearing" under repealed Miss. Code Ann. § 43-23-11. An order is not a record under Miss. Code Ann. § 43-21-251. Therefore, "DHS" lacks a reason to hide behind cinerous [sic] lies.

¶27. There is not a provision in Miss. Code Ann. § 43-21-309 to take a child into custody.

¶28. "DHS" held my son as a "hostage." Otherwise, "DHS" must state it's [sic] authority. And Justices McRae, Easley, and Carlson must prove that February 2, 2000 came chronologically before January 29, 2000.

¶29. With reference to the notice of claim, in §11 of the Court's opinion, this Court boldly stated: "Little served the Attorney General's office." In Exhibit D is the U.S. Postal Service Certified Mail Receipt.

[Reproduction of certified mail receipt omitted in printing.]

Exhibit D: Certified Mail Receipt for the Notice of Claim. The parcel number is in the left margin

¶30. You lied. Were you drunk? on drugs? Crack cocaine?

¶31. I demand a written apology from justices McRae, Easley, and Carlson.

V. CONCLUSIONS

¶32. Justices McRae, Easley and Carlson made a mockery out of the statutes.

¶33. The opinion of this Court is a combination of narcissism and annihilism [sic].

¶34. You don't win by lying - even a broken clock is right

twice a day [sic]

V. RECOMMENDATIONS

¶35. Stop lying.

¶36. Reverse.

By the Appellant

Respectfully submitted
/s/ Ed Little
Ed Little

5377 Mason Road
Biloxi, MS 39532
Address

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the Petition fo [sic] Rehearing on William E. Whitfield, III, Mississippi Bar No. 7161, at Bryant, Clark, Dukes, Glakeslee, Ramsay & Hammond, PLLC, attorney for the Defendant, by placing a copy of same in the United States mail, postage prepaid, addressed to his regular business mailing address at Post Office Box 10, Gulfport, Mississippi 39502.

This the 29th day of November, 2002.

/s/ Ed Little
Ed Little

5377 Mason Road
Biloxi, MS 39532
Address

[Exhibits omitted in printing.]

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2001-CP-01970-SCT

Ed Little APPELLANT - Plaintiff

VS.

Mississippi Department of Human Services
APPELLEE - Defendant

Response to Threaten Sanction for Justices Lying

(Filed February 21, 2003)

Date of Opinion [affirmed on blatant lies]: 11/15/02

Petition for Rehearing: 12/23/02

Order [to coverup lies]: 1/30/03

I. ARGUMENT

¶1. On April 8, 2002, I appealled [sic] an out of venue court order from the Second Judicial District of Harrison County to this Court, Mississippi. The order was actually made in the First Judicial District of Harrison County, Mississippi, before the taking of testimony.

¶2. Three Justices in this Court, in affirming the court order make [sic] in wrong court without answering any of the tough questions I put to this Court, lied about the existence of crucial documents to subvert the laws of this State. Even more interesting, two of the pivotal documents that you lied about in your wrongheaded and misguided opinion required my signature to be authenticated.

¶3. Practicing judicial terrorism, Justice Chuck Easley indicated in an Order, filed January 30, 2003, that I casted [sic] "various aspersions about the integrity of this Court." "He repeatedly accused the Court of lying in the opinion," Justice Easley wrote without indicating whether Justice Easley and the two other justices actually lied.

¶4. It is my duty, parentally and legally, to call you a liar after you had lied.

FIRST LIE

¶5. Clearly, the justices indicated that I had "appealed" a decision from youth/family court to a circuit court. An appeal is a document, words typed in black ink on white paper. The words are read with your eyes. The paper is a physical thing, manufactured by some paper company out of pulp that derived from trees, usually a pine tree. The paper retains the physical attribute of the pine tree, as to occupying space and having

weight.

¶6. I call. I want to see the appeal from family/youth court to the circuit court.

¶7. Therefore, I command you to get all of the paperwork you have on file in this case and any document from any location in the universe that you think that will help you prove that you didn't lie, and spread them out on the conference table such that each sheet of paper can be individually seen. At that point , you shall call in Justices McRae and Carlson to help you find that single piece of paper or papers that show that you didn't lie.

¶8. When you all find it, pick it up with your **right hand**, raising high over your head, screaming "I got it, I got it!"

¶9. If your right hand is empty, you lied on or against me.

¶10. If your right hand is **not** empty, then you are a hallucinogenic liar. Nevertheless, get up and show it to the Chief Justice, run around in the streets and show it to every black or white man you see, post it on your website, run down there and give the Clarion-Ledger a copy, the Meridian Star, The Sun Herald, call Brokaw, Ted Turner, send it to Tom Ridge, Bush, Osama bin Laden, send a copy to Russia and China to [sic]. And when you catch your breath, please send me a copy.

Q-1. Was your right hand empty? yes ☐ no ☐

¶11. You have the balls to talk to me about the "integrity of this Court."

SECOND LIE

¶12. Your opinion was partly based on the psychological invention that MDHS had a court order pursuant to "Miss. Code ANN. § 43-21-301 (2000)," even MDHS never claimed it had such an order. You and MDHS played around with words to make it appear so. Nevertheless, you acted as if such order existed. Therefore, the existance [sic] of such an order is a question of fact.

¶13. I call. I want to see the order pursuant to "Miss. Code ANN. § 43-21-301 (2000)."

[Here insert Paragraph 7 to Paragraph 10.]

Q-2. Was your right hand empty? yes ☐ no ☐

THIRD LIE

¶14. With reference to the Notice of Claim. [sic] did you or did you not write "Little served the Attorney General's office" in your opinion? I'm "Little."

¶15. I call. I want to see the Notice of Claim.

[Here insert Paragraph 7 to Paragraph 10.]

Q-3 Was your right hand empty? yes ☐ no ☐

II. SUMMATION

¶16. It is my duty, parentally and legally, to require you to produce for my inspection all the documents you relied on in reaching your opinion. It is tremendously revealing when you can't produce. Did you think that just by lying that the absent

documents would come walking or parading up High Street?. [sic]

¶17. Enter the number of boxes you checked "yes" in Questions Q-1 to Q-3: ☐

¶18. Enter the number of boxes you checked "no"in Questions Q-1 to Q-3: ☐

¶19. Enter the total of boxes checked [Add Paragraph 17 and 18]: ☐

¶20. If the number you enter in Paragraph 19 is less than three, then go to Paragrapg [sic] 5.

¶21. If the number you enter in Paragraph 19 is three, then that is the total number of lies you told on or against me.

¶22. Now, enter the date of your opinion: ☐

¶23. Enter the date of the petition for rehearing: ☐

¶24. If the date you entered in Paragraph 22 comes chronologically before the date you entered in Paragraph 23, the you aspered [sic] the integrity of this Court.

¶25. On the surface it appear [sic] that your lies were academic. It's more than that. The fundamental uncertainty is whether the justices or this Court, individually or as a panel, can fairly resolve a conflict between a black person and the government or a white person without the frightening introduction of racism in which the Court clearly demonstrated by ignoring it's on [sic] court rules, ignoring statutes, and lying about the facts when such court rules, statutes, and facts were in my favor, a black man.

¶26. Clearly, to make such a grand blunder, a depreciated mental ability is suspected. It also explains while [sic] it is exceeding [sic] difficult to correct your mistakes.

¶27. Racism is mental impairment.

¶28. I will restate the preliminary questions. [Please check the appropriate boxes.]

Q-4. Were you drunk? yes ☐ no ☐

Q-5. Were you of [sic] drugs? yes ☐ no ☐

Q-6. Were you on crack cocaine? yes ☐ no ☐

I have a right to know. If you checked "**no**" in all of the boxes in Question Q-4 to Q-6, then racism is indicated.

¶29. Historically, courts in this State have have [sic] ruled against legitimate legal claims by blacks for crimes committed by whites against us. It is serious racketeering. Here, this Court is tring [sic] to sweep under the rugs [sic] falsified documents, ignorant white judges sitting in the wrong court, scores of white witnesses lying off and on the stand, and the wholesale slaughther [sic] of the laws of this State to mess over a black man and his son. Look at yourself, you are sitting there with an empty right hand with your mouth poked out tring [sic] to think up a way to get back at me instead of trying to square up the facts ans [sic] laws in this case.

¶30. I have no confidence in Justices Carlson, McRae, or Easley. you'll lied [sic].

¶31. You have no constitutional right to determine if you

lied. The Legislature and/or myself have that responsibility.

By the Appellant

Respectfully submitted

/s/ Ed Little
Ed Little

5377 Mason Road
Biloxi, MS 39532
Address

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the Petition fo [sic] Rehearing on William E. Whitfield, III, Mississippi Bar No. 7161, at Bryant, Clark, Dukes, Glakeslee, Ramsay & Hammond, PLLC, attorney for the Defendant, by placing a copy of same in the United States mail, postage prepaid, addressed to his regular business mailing address at Post Office Box 10, Gulfport, Mississippi 39502.

This the 16th day of February, 2003.

/s/ Ed Little
Ed Little

5377 Mason Road
Biloxi, MS 39532
Address

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

ED LITTLE,

Appellant,

vs. **No. 2001-CP-01970-SCT**

MISSISSIPPI DEPARTMENT OF HUMAN SERVICES,

Appellee.

MOTION TO VACATE SANCTIONS ORDER

(Filed July 16, 2003)

The appellant, Ed Little, who is represented by the undersigned counsel, moves to vacate the order entered by this Court on April 24, 2003 sanctioning Mr. Little in the sum of $1,000.00 for using "offensive and disrespectful language" and for "having utter disrespect" for the Court in his December 2, 2002 pro se petition for rehearing. Mr. Little previously has proceeded pro se in this case. This motion is being filed by the undersigned counsel because the Court's sanctions order violates the United States Constitution, including the First and Fourteenth Amendments, and the Mississippi Constitution, including Article 3, §§ 13, 14, and 25.[1]

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[1] To the extent this request to rehear this matter is untimely, the appellant requests that the Court suspend its rules as permitted by Rule 2(c), M.R.A.P., or grant an enlargement of time pursuant to M.R.A.P. 26(b), and consider the motion on its merits. Mr. Little previously was unrepresented. The sanctions order implicates serious constitutional issues and this Court should reconsider the matter now that he has counsel to argue these

In *In re Little*, 404 U.S. 553, 554 (1972), the Supreme Court reversed a contempt order issued against a pro se litigant who had accused a trial judge in open court of bias and of prejudging the case. As the Supreme Court said:

> There is no indication . . . that petitioner's statements were uttered in a boisterous tone or in any wise actually disrupted the court proceeding. Therefore, "The vehemence of the language used is not alone the measure of the power to punish for contempt. The fires which it kindles must constitute an imminent, not merely a likely, threat to the administration of justice. The danger must not be remote or even probable; it must immediately imperil . . . (T)he law of contempt is not made for the protection of judges who may be sensitive to the winds of public opinion. Judges are supposed to be men of fortitude, able to thrive in a hardy climate." *Craig v. Harney*, 331 U.S. 367, 376 (1947).

In Re Little, 404 U.S. at 555.

The case quoted in the foregoing passage in *Little* — *Craig v. Harney*, 331 U.S. 367 (1947) — involved a reversal by the Supreme Court on First Amendment grounds of a contempt order entered because a judge had been called high handed and

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questions. Moreover, the constitutional problems with the sanctions order constitute the sort of plain error that this Court would consider even absent procedural preservation if the error had occurred in a trial court. By analogy, this Court should consider the merits of the constitutional claims in this motion even if the motion is untimely. Finally, even though we have labeled this a "motion to vacate sanctions order," we ask that this be considered — if the Court deems it appropriate — as a motion for rehearing under M.R.A.P. 40, and that it be considered on the merits pursuant to M.R.A.P. 2 and 26(b) even if it is otherwise untimely.

his decision labeled a tragedy. The Court made it clear that free speech should not be hampered by sanctions unless the speech involves a "serious and imminent threat" and a "clear and present danger to the administration of justice." *Craig v. Harney*, 331 U.S. at 372-373. "The fact that the discussion . . . was not in good taste falls far short of meeting the clear and present danger test." *Id.* at 377.

Clearly, the present case is not a situation where there is a serious threat to the administration of justice or a likelihood that the administration of justice will be obstructed. The statements by the appellant were in a written petition. They were in no way physically disruptive of a courtroom. Furthermore, the appellant is not a member of the bar, and there is no need to sanction him as part of this Court's regulation of the conduct of members of the legal profession and of the attorneys who practice before the Court.

Accordingly, this Court should reconsider and rehear this matter and vacate its order of April 24, 2003 sanctioning the appellant with a fine of $1,000.00.

Respectfully submitted

/s/ Robert B. McDuff
ROBERT B. MCDUFF
Miss. Bar No. 2532
767 North Congress Street
Jackson, Mississippi 39202
(601) 969-0802

Counsel for Appellant in his challenge to the sanctions order

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served by first-class mail, postage prepaid, on the following:

William E. Whitfield, III
Bryant, Clark, Dukes, Blakeslee, Ramsay & Hammond, PLLC
Post Office Box 10
Gulfport, MS 39502

This 16th day of July, 2003. All parties required to be served have been served.

/s/ Robert B. McDuff
Robert B. McDuff

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

ED LITTLE,

Appellant,

vs. **No. 2001-CP-01970-SCT**

MISSISSIPPI DEPARTMENT OF HUMAN SERVICES,

Appellee.

SUPPLEMENT TO THE MOTION TO VACATE SANCTIONS ORDER

(filed July 22, 2003)

This supplement is filed in order to make the following additional points relating to the $1,000.00 sanctions order previously entered by this Court in this case:

Given that this Court said that incarceration may result if Mr. Little does not pay the $1,000.00 fine, it is clear that he was entitled under the Sixth Amendment of the United States Constitution to the assistance of counsel to defend him and to raise all appropriate arguments in response to the possibility that he would be held in contempt of court. *See, Alabama v. Shelton*, 535 U.S. 654 (2002) (Sixth Amendment requires assistance of counsel even in misdemeanor prosecution if suspended sentence is imposed since there is a possibility the defendant will be incarcerated if he does not comply with certain conditions). He did not have the assistance of counsel when the show cause order was first issued. He does have

counsel now who has raised various arguments in the motion to vacate and in this supplement. Thus, the Sixth Amendment problem can be ameliorated if this Court will consider those arguments and either grant or deny the motion to vacate on the merits rather than deny it as untimely.

Since the contempt was imposed for statements directed at the Justices of this Court, the issue of contempt should not have been decided by the Justices. Instead, the due process clause of the Fourteenth Amendment requires that they recuse themselves and that the question of contempt be decided by another judge or tribunal of judges. *See, Mayberry v. Pennsylvania*, 400 U.S. 455, 465 (1971).

Miss. Code Ann. § 9-1-17 limits the fine for contempt to $100.00. Thus, the $1,000.00 fine imposed in this case must be reduced to $100.00.

Even if Miss. Code Ann. § 9-1-17 did not limit the fine to $100.00, there is a separate statute, Miss. Code Ann. § 11-51-11(4), providing that no fine of over $500.00 can be imposed relating to contempt of court unless the defendant is given the option of a jury trial. (Although most courts are limited to $100.00 contempt fines by § 9-1-7, justice courts can impose contempt fines of up to $1,000.00. *See*, Miss. Code. Ann. § 9-11-15; *Thomas v. State*, 734 So.2d 339, 342 (Miss. App. 1999) (justice court can impose contempt fines of up to $1,000.00, but circuit, chancery, appellate, and supreme court contempt fines are limited to $100.00)). That did not happen here. Thus, even if § 9-1-17 did not require reduction of the fine to $100.00, this separate statute would require that it be reduced to $500.00.

Also, both Miss. Code Ann. § 11-51-11(4) and the Due Process Clause of the Fourteenth Amendment require that

criminal contempt charges be proven and found beyond a reasonable doubt. *Hicks on Behalf of Feiock v. Feiock,* 485 U.S. 624, 632 (1988). The contempt alleged here clearly is criminal rather than civil contempt since Mr. Little is being punished for prior behavior rather than suffering a sanction that will be lifted if and when he complies with an order of the Court. This Court has not made any finding that the proof against Mr. Little shows contempt beyond a reasonable doubt. Particularly in light of the points made previously in the motion to vacate, this burden cannot be met.

For all of these reasons, the sanctions order should be vacated and the Justices of this Court should recuse themselves from any further consideration of the matter of contempt.

Respectfully submitted,

/s/ Robert B. McDuff
ROBERT B. MCDUFF
Miss. Bar No. 2532
767 North Congress Street
Jackson, Mississippi 39202
(601) 969-0802

Counsel for Appellant in his challenge to the sanctions order

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I hereby certify that a copy of the foregoing has been served by first-class mail, postage prepaid, on the following:

William E. Whitfield, III
Bryant, Clark, Dukes, Blakeslee, Ramsay & Hammond, PLLC
Post Office Box 10
Gulfport, MS 39502

This 26th day of July, 2003. All parties required to be served have been served.

/s/ Robert B. McDuff
Robert B. McDuff